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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,912	05/14/2002	Michael O'Connor	42390.P3674R	1765

8791 7590 12/05/2003

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EXAMINER
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TOLIN, GERALD P

ART UNIT	PAPER NUMBER
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2835

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/976,912

**Applicant(s)**

O'CONNOR ET AL.

**Examiner**

Gerald P Tolin

**Art Unit**

2835

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32, 35-43, 45-48 and 52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32, 35-43, 45-48, 52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

1. The 10-10-03 amendment has been received and this letter is in response thereto.
2. Claims 33,34,44 and 49-51 have been cancelled. Claims 1-32,35-43,45-48 and 52 remain active.
3. In view of applicant's arguments and a thorough review of the papers filed in this case, the paragraph 1 of the first action objection is no longer adhered to. Applicant's arguments were convincing on this point.
4. The first action paragraph 2 defective oath/declaration is believed proper and is repeated herein. Applicant's arguments on this point are not convincing. Applicant argues that the original application failed to claim certain embodiments. How is this an error? It appears that a divisional case should have been filed. This is not an error for a reissue case. MPEP 1414 states that identifying a single phrase, word, expression/etc., in the written description or claims and how such renders it invalid must be done. Such is not the case herein.

Also, in the oath/declaration it should be stated that "all" errors arose without deceptive intent since errors are alleged. The current language refers to an error.

5. Claims 1-32,35-43,45-48 and 52 are rejected for the same reasons given in paragraph 3 of the first action (based on a defective oath as explained above).
6. Claims 28-32,35-43,45-48 and 52 are rejected under 35USC251 as being an improper recapture as explained in paragraph 4 of the first action. Applicant's arguments on this point were carefully considered but not persuasive.

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Applicant argues that reissue claims are deemed different in scope from the originally cancelled claims if they are narrower in at least one respect. This is not determinative of the issue. The claims are broader if they are broader in at least one respect and such specifics were pointed out in the first action in paragraph 4 thereof. Further, applicant has not specified in his arguments by referring to any specific claim language.

Accordingly this rejection is still adhered to.

7. Claims 20-32 and 35 are rejected under 35USC102 and 103 for the same reasons given in paragraphs 8-12 of the first action.

The only change in these claims is changing 'air flow generator' to fan(s). Such fails to distinguish over the applied art. Further, applicant argues claim 51, however, that claim is cancelled in the current amendment. Such argument is therefore moot.

Nelson is said to lack "an air duct comprising a housing, with the air duct directing an air flow from an inlet port to an outlet port". This is the only argument given in the art rejection of the relevant claims. As explained in paragraphs 8-12 of the first action, Duct 24 is inside housing 12 as a duct/chamber, with inlets at fans 32 and outlets at openings 22. Such reads on the claim language. The claims are therefore properly rejected.

The claim language is broader than applicant argues.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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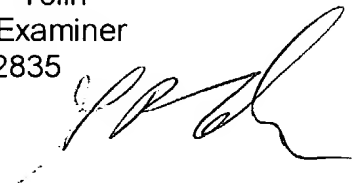
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald P Tolin whose telephone number is 703-308-3114. The examiner can normally be reached on M-F first friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703-308-0538. The fax phone number for the organization where this application or proceeding is assigned is 703-305-1341.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Gerald P Tolin  
Primary Examiner  
Art Unit 2835



gpt